

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 813 of 1995

in

SPECIAL CIVIL APPLICATION No 10086 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KANTIBHAI M. PANCHAL,

Versus

STATE OF GUJARAT.

Appearance:

MR SATISH A PANDYA for Petitioners
MR RM DESAI for Respondent No. 1
MR VIJAY H PATEL for Respondent No. 2
SERVED BY DS for Respondent No. 4
SERVED for Respondent No. 5

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 26/06/96

Admitted.

Mr. Y.F.Mehta learned A.G.P. waives service of notice of admission on behalf of respondents nos. 1 and 3. Mr. V.H.Patel, learned advocate waives service of notice of admission on behalf of respondents nos 2 and 4. Mr. Pandya requests to delete respondent no.5 as he says that the appellant does not claim any effective relief from respondent. Permission granted.

2. In the facts and circumstances of the case, the matter is taken up for final hearing.

3. This appeal is filed against an order of the learned single Judge passed in Special Civil Application No.10086 of 1994 dated December 5,1995. By the said order the learned single Judge dismissed the petition filed by the appellant-petitioner against an order passed by the Gujarat Secondary Education Board -respondent no.2 confirmed by the State Government -respondent no.1 .

4. It appears that the petitioner made an application to the respondent no.2 Board permitting it to start Standard VIII from June 1992. The said application was rejected by the Board only on the ground that there was no requirement as laid down in Regulation No. 9(15) of the Gujarat Secondary Education Board Regulations. Being aggrieved by the said order, the present appellant preferred an appeal before the State Government. It however, appears that the State Government in the appeal filed by the appellant took into consideration various aspects and details regarding Secondary Schools run in Chandlodia area. It was observed that a number of schools run in the nearby locality had objections for granting permission.

5. Nothing is mentioned so far as the order passed by the respondent no.2-Board is concerned. It was contended by Mr. Pandya that there was an incorrect factual statement in the appellate order to the effect that all the schools mentioned in the impugned order i.e. seven schools had objected. Mr. Pandya submitted that 2 schools had stated that they had no objection and even today they have no objection. We are not expressing any opinion on that aspect. Suffice it to say that all the contentions which have been advanced by the appellant

have not been taken into consideration by the appellate authority and a reasoned decision has not been given as held by this court in the case of Sharda Education Trust vs State of Gujarat 17 G.L.R. 298, while deciding an appeal, the State Government is exercising quasi-judicial functions. Such an order adversely affects the rights of the applicant to run the school or to open a class. In the circumstances when the appeal is to be disposed of, it must record the reason in support thereof.

6. In view of the fact that additional facts have been taken into account and the order is not a speaking one recording reasons, the L.P.A. requires to be allowed and is accordingly allowed. The order passed by the learned single Judge as well as the State Government and the Board are hereby quashed and set aside. The Board will again decide the matter after hearing the appellant as well as others likely to be affected. In the facts and circumstances, the Board will take into account all the facts and circumstances and pass appropriate orders in accordance with law in the light of the decision of this Court in Sharda Education Trust referred to above. Since the matter pertains to opening of Standard VIII. the Board is directed to dispose of the matter as expeditiously as possible preferable within three months from the receipt of the writ. D.S. permitted.

(C.K.Thakker.J)

(S.D.Pandit.J)

for correction pl.see original